



Final

59th Plenary meeting

18 January 2022, Remote

1 Adoption of the minutes and of the agenda, Information given by the Chair

1.1 Minutes of the 58th Plenary meeting – adoption

The minutes of the previous plenary meeting were adopted unanimously. The members of the EDPB also agreed on the public version of the minutes.

1.2 Draft agenda of the 59th EDPB meeting – adoption

The draft agenda was adopted with the inclusion of new items 1.3 (Minute of silence in tribute to President Sassoli), 1.4 (Retirement of the ES SA's Director of the International Relations Division), 5.1 (Expert opinion on Current State of U.S. Surveillance Law and Authorities) and 5.2 (Pegasus) and the correction of the title of item 4.1.1.

The discussions relating to agenda points 2.2, 3.1, 6.1 were declared confidential according to Art. 33 EDPB RoP.

1.3 Minute of silence in tribute to President Sassoli

The EDPB members paid tribute to David Sassoli, President of the European Parliament, who passed away this month.

1.4 Retirement of the ES SA's Director of the International Relations Division - information

The ES SA's Director of the International Relations Division informed the EDPB members of his upcoming retirement at the end of this month.

On behalf of the EDPB, the EDPB Chair expressed her appreciation for the contributions Director Garcia Gozalo has made to the field of data protection, specifically but not limited to his contributions to the EDPB work.

2 Consistency mechanism and Guidelines

2.1 Guidelines on data subject rights - Right of access – discussion and adoption

The rapporteur presented the work done on these guidelines within the KEYP ESG.

On the topic of internal connection logs, the rapporteur recalled that a number of questions on internal connection logs are currently pending before the CJEU. Several EDPB members noted that the mere fact that a legal question is before the court does not curtail the powers or obligations of the SAs.

Following a discussion on the wording of the draft guidelines, the EDPB members removed one paragraph on internal connection logs, noting that the topic will in any case be revisited following the public consultation. For the sake of completeness, a reference to the case pending before the CJEU will be inserted.

The EDPB members discussed the options presented by the KEYP ESG on the scope of application of Art. 15.4 GDPR. A majority of the EDPB members supported a narrow interpretation of the exception to data subjects' rights contained in this provision.

The guidelines were unanimously adopted by the members of the EDPB with the modifications agreed upon during the meeting. The guidelines will be subject to a public consultation for a period of 6 weeks.

2.2 Review of internal Art. 60 Guidelines: Art. 60 (2) and (7)-(11) GDPR – discussion and adoption

The rapporteur presented the draft of the last part of the Art. 60 guidelines that deals with Art. 60(2) and (7)-(11) GDPR.

One EDPB member pointed out that the draft does not resolve some issues concerning specific national case law applicable in particular situations, which leads to the SA abstaining from the vote.

The members of the EDPB preliminarily adopted the last part of the Art. 60 guidelines, with one EU member abstaining.

The rapporteur recalled that a consolidated document will be presented to the COOP ESG in order to ensure consistency among the different sections. Following this step, the consolidated document will be presented to the EDPB plenary for adoption.

3 Current Focus of the EDPB Members

3.1 Cooperation – discussion

The EDPB members discussed their experiences with the One-Stop Shop mechanism and cooperation under the GDPR. Members agreed there is room to improve the functioning of the mechanism and to enhance cooperation, but considered that changes to the system are, at this point, premature. The EDPB members decided to continue this important discussion on commissioner level during a dedicated meeting in spring.

3.2 Icons for information and transparency: results on the contest launched by IT SA – information

In March 2021, the IT SA launched a design contest for icons aiming to assist controllers in complying with their transparency obligations towards data subjects. Of 59 entries, an ad hoc panel selected 3 laureates. These sets of icons are made available for use on the IT SAs website under the terms of a creative commons licence (CC-BY).

4 FOR DISCUSSION AND/OR ADOPTION – Expert Subgroups and Secretariat

4.1 BTLE ESG

4.1.1 Evaluation of the LED: publication of individual replies to questionnaire – decision

The EDPB Secretariat recalled the publication of the EDPB’s contribution to the evaluation of the Law Enforcement Directive, following its adoption at the plenary meeting in December 2021. Individual replies to the questionnaire have not been published by the EDPB Secretariat as no decision on this matter had been taken.

The EDPB members voted unanimously in favour of the publication of the individual replies to the questionnaire.

4.1.2 Letter to Chair of the LIBE Committee on Cybercrime Convention - state of play

The rapporteur presented the state of play on the work done in the BTLE ESG. The EDPB members took note of the information provided.

4.2 Coordinated Supervision Committee

4.2.1. Update on the work of the Coordinated Supervision Committee pursuant Article 4(2) of the CSC Rules of Procedure – information

The coordinator of the CSC provided the EDPB members with an update of the CSC’s activities during the second half of 2021. During this time period, the CSC exercised oversight on IMI, EUROJUST and EPPO.

The CSC adopted a report on general implementation of IMI, where it is envisaged to draft recommendations towards controllers concerning the obligation of information according to Art. 13 GDPR as well as other coordinated activities within IMI. The report will soon be published. On Eurojust, a preliminary report on the audit done by the EDPS identified possible areas of coordination among the MS. On EPPO, a common questionnaire was developed so DPAs follow EPPO’s implementation from the start at national level.

At the end of December, the deputy coordinator ended her mandate and a new deputy coordinator was elected.

The next update to the EDPB will be provided in June 2022.

4.3 Financial Matters ESG

4.3.1 Preparation of a letter on the EU AML/CFT proposal – request for mandate

The coordinator of the FMESG presented a request for mandate regarding the protection of data processed in relation to the prevention of money laundering or terrorist financing.

The European Commission expressed their appreciation for the exchanges in the past on this topic with the EDPS and the EDPB and is available for further exchanges.

The mandate was unanimously adopted by the members of the EDPB.

4.4 Key Provisions ESG

4.4.1 Reply to letters calling for a consistent interpretation of cookies consent requirement – adoption Updates by SAs

The rapporteur presented the draft letter in response to two letters sent by twelve French representative associations in the fields of online marketing and publishing in which they call for a consistent interpretation of cookie consent requirement by the EDPB and its members.

The letter was unanimously adopted by the members of the EDPB.

4.5 Secretariat

4.5.1 EDPB 2023 plenary meeting dates – discussion and adoption

The EDPB Secretariat presented the proposal for meeting dates in 2023.

The list of dates was unanimously adopted by the members of the EDPB.

5 AOB

5.1 Expert opinion on current State of U.S. Surveillance Law and Authorities - information

The DE SA informed the EDPB members about a fact-finding study commissioned by them on the current State of U.S. Surveillance Law and Authorities. The study will be published online.

5.2 Pegasus - discussion

The European Commission requested information from SA's on whether any additional investigations have been initiated in relation to the use of Pegasus software.

One EDPB member noted there were media reports of Pegasus software being used in their member state.

6 For information - Expert subgroups and Secretariat

6.1 Joint controllership in IMI: best practice – written state of play

The EDPB members took note of the written state of play concerning best practices for the use of IMI for situations of joint controllership.

Annex: Attendance List

SAs:

AT SA, BE SA, BG SA, CY SA, CZ SA, DE SA, DK SA, EDPS, EE SA, EL SA, ES SA, FI SA, FR SA, HR SA, HU SA, IE SA, IS SA, IT SA, LI SA, LT SA, LU SA, LV SA, MT SA, NL SA, NO SA, PL SA, PT SA, RO SA, SE SA, SI SA, SK SA

- European Commission

- Observers: MD, SR.

In line with Art. 8 of the EDPB RoP, the observers were present during the plenary meeting except for agenda points 2.2, 3.1. and 6.1 of the agenda.

- EDPB Secretariat